



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CERE-C-WR

26 APR 2001

MEMORANDUM FOR COMMANDER, NORTHWESTERN DIVISION
ATTN: CENWD-ET-R

SUBJECT: Implementation of Title VIII of the Water Resources Development Act of 2000 – “The Charles M. Russell National Wildlife Refuge Enhancement Act of 2000”

1. Purpose. The purpose of this memorandum is to provide implementation guidance for Title VIII of the Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000).
2. Applicability. This guidance applies to all conveyances of cabin sites at Fort Peck Lake, Montana, and to all land acquisitions driven by the objectives listed in section 802 of WRDA 2000. Title VIII directs the Secretary of the Army (the Secretary), working with the Department of the Interior (DOI), to convey cabin sites at Fort Peck Lake, Montana. It also provides the DOI acquisition authority for the Charles M. Russell National Wildlife Refuge.
3. Funding for this program will follow normal budgetary processes for new start proposals as contained in the budget circular established every year. This will be considered a “new start” and will follow “new start” guidelines and evaluation procedures for funding prioritization. No funding has been appropriated at this time.
4. For all conveyances pursuant to Title VIII, a Report of Excess should be completed, accompanied by an Environmental Baseline Study, Finding of Suitability to Transfer (FOST), and appropriate NEPA and section 106 documentation. Guidance on FOSTs is found in 14 Jan 99 CERE-M Real Estate Policy Guidance Letter No. 21.
5. Conveyance of Cabin Sites.
 - a. The District should identify those cabin sites that meet the section 803 definition of “cabin site” or “cabin site area”. Requirements for conveyance of cabin sites pursuant to section 804 make it necessary for the Department of the Army (DA) and the DOI to work in close coordination with one another. In order to make that happen most efficiently, the District should work with the appropriate local DOI representatives. If the District and the local DOI representative cannot reach a required concurrence at that

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level, the District should prepare a memorandum setting forth the differences of opinion between the agencies. The memorandum should be signed by both the District representative and the local DOI representative and forwarded to the next level of each organization for resolution. If the differences cannot be resolved at the secondary level, the memorandum should then be forwarded to the Washington level for resolution.

b. Pursuant to section 804(a)(1), the District is directed to refrain from issuing any new cabin site leases, unless such issuance is necessary to consolidate with, or substitute for, an existing cabin site lease.

c. Not later than December 11, 2001, and before proceeding with any exchange under Title VII, the District must comport with the following:

(1) Determine, with the concurrence of DOI, the individual cabin sites that are not suitable for conveyance for the reason stated in section 804(a)(2)(A)(i), and

(2) Determine, with the concurrence of the DOI and the lessee, those individual cabin sites which are not suitable for the reason stated in section 804(a)(2)(A)(ii), and

(3) Provide written notice to each lessee, in accordance with section 804(a)(2)(B). The written notice must be in conformance with the requirements specified in section 804(a)(2)(B) and should include any specific requirements concerning notification by the lessee of the lessee's interest in acquiring a cabin site. The written notice should also advise the lessee of the lessee's rights under Title VIII.

d. If the District determines, under section 804(a)(2)(A), that a cabin site is not suitable for conveyance, then the District, in consultation with DOI, shall offer to the lessee the opportunity to acquire a comparable cabin site within the same cabin site area. Pursuant to section 804(i), a cabin site that is determined to be unsuitable may not be conveyed by either Secretary.

e. Lessees have until July 1, 2003, to notify the District in writing of their interest in acquiring a cabin site and providing information as requested in the written notice required by subsection 804(a)(2)(B). If the lessee does not submit a notice of interest or declines the opportunity to purchase, the cabin site shall be subject to sections 805 and 806.

f. After providing notice to the lessee under section 804(a)(2)(B), the District may proceed with the conveyance process in concurrence with DOI and as provided for in section 804(c). Specific responsibilities of the District in carrying out section 804(c) include--

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(1) surveying each cabin site to determine the acreage and legal description of the cabin site area, including land described under section 804(c)(1);

(2) taking such actions as are necessary to ensure compliance with all applicable environmental laws;

(3) preparing permanent easements or deed restrictions in accordance with section 804(c)(5); and

(4) appraising each cabin site.

g. The District is required to consult with the lessees, affected counties, the Fort Peck Lake Association, hold public hearings and provide interested parties with notice and opportunity to comment on the activities planned pursuant to this law. Implementation of Title VIII should be supported as a new start, and the District should budget for the real estate work planned.

h. The District, or where appropriate, DOI, shall convey a cabin site by individual patent or deed, subject to sections 804(h) and 804(i), and in accordance with section 804(e).

i. Roads: Neither agency may construct a road for the sole purpose of providing access to land conveyed under this section. Neither agency is under any obligation to maintain any existing road used primarily for access to a cabin site. However, the District, with concurrence of DOI, may offer to convey any road determined to primarily service the land conveyed under this section to the State of Montana, any political subdivision of the State, or the Fort Peck Lake Association.

j. Utilities and Infrastructure: Neither agency may provide utilities or infrastructure to the cabin sites. Responsibility for acquiring utilities and infrastructure rests with the purchaser of a cabin site.

k. Easements and Deed Restrictions: Deeds for conveyance of a cabin site under Title VIII must include such easements and deed restrictions as are determined necessary pursuant to section 804(c)(5), and these covenants shall run with the land and be binding on all subsequent purchasers of the cabin site.

l. Identification of Land for Exchange. The Department of the Army defers to DOI on implementation of section 804(j).

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m. Rights of Nonparticipating Lessees:

(1) A lessee who does not provide notification of intent to acquire the cabin site or who declines the offer of a comparable cabin site under section 804(a)(3) may elect to continue to lease the cabin site for the remainder of the current term of the lease. The lease may not be renewed, unless it expires before 2010. If the term of the lease expires before 2010, the District shall offer to extend or renew the lease through 2010.

(2) Any improvements owned by the lessee or personal property of the lessee not removed by the lessee from the cabin site before the lease terminates shall be considered the property of the United States, in accordance with the provisions of the lease.

(3) A lessee who initially declines an offer to purchase the cabin site or a comparable cabin site may, at any time before termination of the lease, notify the District of an intent to purchase the cabin site. The District, or, where necessary, DOI, shall convey the cabin site to the lessee, provided the lessee pays for an updated appraisal of the cabin site. The conveyance shall be by individual patent or deed, and shall take place upon receipt of payment of the updated appraised fair market value and such administrative costs as are authorized by Title VIII.

n. Report. The District should forward the report required by section 805(f) to HQUSACE NLT May 1, 2003.

o. Conveyance to Third Parties. After the expiration or surrender of a lease, the District, with the concurrence of DOI, may offer property not conveyed to a lessee under Title VIII for sale by public auction, written invitation, or other competitive sales procedure, at fair market value. No cabin site determined unsuitable for conveyance under section 804(a)(2)(A) may be conveyed, and any conveyances to third parties shall include such easements and deed restrictions as are determined necessary. The easements and deed restrictions shall run with the land and shall be binding on subsequent purchasers.

p. Management of Remaining Land Within Cabin Site Areas. The District, in consultation with DOI, shall manage lands lying within the outer boundaries of a cabin site area and which are not conveyed under Title VIII in the same manner as those lands were managed prior to enactment of the WRDA 2000. Management of those lands shall be consistent with the purposes for which the Refuge was established. The District may not initiate or authorize any development or construction on such lands without the concurrence of DOI.

q. Use of Proceeds. All payments for the conveyance of cabin sites under Title VIII, except for the costs reimbursed to the Secretary of the Army under section 808(b), shall

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be deposited in the special fund within the Montana Fish and Wildlife Conservation Trust, as specified in section 807(a)(1).

r. Administrative Costs. The DA is responsible for paying all administrative costs, except as provided for in section 808(b). The District shall keep a record of requests for and payments of administrative costs to DOI representatives. As provided for in section 808(b), DA or DOI may, as a condition of conveyance, require the party to whom the property is conveyed to reimburse the involved agency for a reasonable portion of the direct administrative costs (including survey costs) incurred in carrying out conveyance activities. Such reimbursement shall take into consideration any cost savings achieved as a result of a party's agreeing to purchase its cabin site as part of a single transaction for the conveyance of multiple cabin sites. The appropriate agency shall require the party to whom the property is conveyed to reimburse the Fort Peck Lake Association for a proportionate share of the costs (including interest) incurred by the Association in carrying out transactions under Title VIII.

s. Revocation of withdrawals. Any public land withdrawal affecting the land described in any conveyance document executed by DA or DOI shall be revoked with respect to that land. The District should furnish copies of all executed deeds to DOI. Land retained by DA or DOI shall remain public domain land if so designated, and the boundary of the Refuge, as established by Executive Order 7509, shall remain unaffected. If any property conveyed under Title VIII is later reacquired by the United States, any public land withdrawal revoked under section 809 shall be reinstated with respect to the reacquired land.

6. If the District desires a delegation of authority to execute deeds locally, they are invited to submit a request to CERE-C with supporting information and a sample deed with the proposed covenants.

7. Your point of contact here is Ms. Peggy Erickson, Chief, Western Region Team, CERE-C, 202-761-5530.

FOR THE COMMANDER:


LINDA D. GARVIN
Director of Real Estate